

## **REMARKS**

The Office Action dated June 2, 2008, has been received and carefully noted. The above amendments to the claims, and the following remarks, are submitted as a full and complete response thereto.

### **Status of the Claims**

Claims 1-3, 5, 6, 10-21, 36-48, 50, 52, 54 and 55 have been amended to more particularly point out and distinctly claim the subject matter of the invention. Support for the claim amendments can be found, for example, in paragraphs [0056], [0058], [0064], [0067] and [0068] of the present application. Claims 56-59 have been cancelled without prejudice or disclaimer. New claims 60-67 have been added. No new matter has been added. While the Office Action stated that claims 36-45 were withdrawn from consideration, Applicant submits that the withdrawal of these claims is improper as discussed in detail below. Thus, Applicant has presented amendments to claims 36-45 and these claims are included as currently pending claims in the Response. Accordingly, claims 1-21, 36-55 and 60-67 are currently pending in the application and are respectfully submitted for consideration.

### **Election/Restriction**

On page 2, the Office Action stated that "Applicants' Election/Restriction response and amendment filed on February 29, 2008 have been received and considered but they are not deemed to be persuasive for the Election/Restriction of claims 1-59. The restriction is respectfully maintained as set forth in the last Office Action mailed on

February 07, 2008.” The Office Action also indicated that claims 36-45 were withdrawn from consideration. However, the Office Action has not provided any reasoning in the record as to why the restriction requirement was maintained in light of Applicant’s arguments presented in the Response filed February 29, 2008. In fact, the Office Action failed to address any of the numerous arguments that Applicant presented on pages 12-16 of the previous Response. Per 37 C.F.R. § 1.104(b), an Office Action must be complete as to all things, and this includes addressing an Applicant’s arguments in full.

Further, MPEP § 707.07(f) states that “[i]n order to provide a complete application file history and to enhance the clarity of the prosecution history record, an examiner **must** provide clear explanations of all actions taken by the examiner during prosecution of an application” and where a traversal is presented in a Response, the Examiner should “take note of the applicant’s argument and **answer the substance of it**” (emphasis added). Failure to specifically respond to Applicant’s arguments renders the Office Action arbitrary and capricious, and therefore invalid under the Administrative Procedure Act (5 U.S.C. § 706), a standard to which all Actions by the USPTO must adhere (see *Dickenson v. Zurko*, 527 U.S. 150 (1999)).

Accordingly, the outstanding Office Action is deficient since it is not complete as to all matters. Applicant reiterates the arguments presented in the previous Response. If the Examiner continues to maintain the restriction requirement, Applicant respectfully requests that the Examiner provide reasoning for maintaining said restriction requirement, including specific responses to Applicant’s arguments. Applicant also

respectfully notes that at least because the outstanding Office Action is deficient for failing to respond to Applicant's arguments from the previous Response, a next Action in this case **cannot** be made final.

### **Rejection under 35 U.S.C. § 101**

Claims 46-59 were rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Specifically, the Office Action stated on page 2 that “[c]laim 46 recite [sic] a computer program comprising code adapted to perform the steps when executed on a data processing system are not statutory as not being tangible embodied in computer readable media and execute in a computer or by a computer are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer.” Claim 46 has been amended to recite a “computer program embodied on a computer-readable medium, the program controlling a processor to perform a process”. The MPEP states that “a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program’s functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035” (MPEP § 2106.01). Claims 56-59 have been cancelled without prejudice or disclaimer. Claims 46-55 depend from independent claim 46 and it is respectfully submitted that the above amendments to claim 46 also overcome the rejection with respect to the dependent claims.

Accordingly, it is respectfully submitted that the rejection is overcome and respectfully requested that the rejection be withdrawn.

**Rejection under 35 U.S.C. § 103**

Claims 1-21 and 46-59 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Evans (U.S. Patent No. 7,308,506) in view of Mikkonen et al. (U.S. Patent No. 6,501,741). The Office Action took the position on pages 3-6 that the combination of Evans and Mikkonen et al. teaches all of the features of the rejected claims. Applicant respectfully submits that Evans and Mikkonen et al., both individually and in combination, fail to teach or suggest all of the features of the above-rejected claims. Reconsideration of the claims is respectfully requested.

Independent claim 1, from which claims 2-21 depend, recites a method including informing a current address of a first node to at least one of a third node and a content source node, receiving at least one home address for the first node in response to the informing of the current address and initiating a multimedia session between the first node and the content source node. The multimedia session includes at least two flows associated with different home addresses. Each of the at least two flows carries a separate media stream. The method also includes receiving the at least two flows from the content source node at the first node and detecting a need to move at least one flow among the at least two flows from the first node to a second node.

Independent claim 46, from which claims 47-55 depend, recites a computer program embodied on a computer-readable medium controlling a processor to perform a

process, including informing a current address of a first node to at least one of a third node and a content source node, receiving at least one home address for the first node in response to the informing of the current address and initiating a multimedia session between the first node and the content source node. The multimedia session includes at least two flows associated with different home addresses. Each of the at least two flows carries a separate media stream. The process also includes receiving the at least two flows from the content source node at the first node and detecting a need to move at least one first flow among the at least two flows from the first node to a second node.

As will be discussed below, Evans and Mikkonen et al., both individually and in combination, fail to teach or suggest all of the features of the presently pending claims.

Applicant submits that Evans generally discusses that, when establishing alleged routing optimization in Mobile IPv6, a mobile node initiates the sending of two messages - a Home Test Initiation (HoTI) and a Care-of-Test Initiation (CoTI). The HoTI message is sent via the home agent (HA) to the Correspondent Node (CN) and the CoTI is sent directly to the CN from the mobile node. The HoTI and CoTI messages carry authentication tokens. The CN responds to these messages via the respective paths with Home Test (HoT) and care-of-test (CoT) messages that carry response authentication tokens. Using these authentication tokens, the mobile node forms authenticators that the mobile node will use to send a Mobile IP binding update to the CN. The CN sends a binding acknowledgement to the mobile node and updates its binding cache.

As in normal IPv6 mobility, the binding cache enables the upper protocol layers in the CN to use the mobile node home address irrespective of the current address of the mobile node. In an apparent attempt to avoid denial-of-service attacks where an attacker floods the CN with concocted HoTI and CoTI messages and binding updates that consume certain processing capacity in the CN, Evans has introduced a pseudo-CN that as an intermediary node between the HA, the foreign agent of the mobile node and the CN. The pseudo-CN maintains the binding cache and processes the HoTI and CoTI messages and issues respective HoT and CoT messages. The pseudo-CN also intercepts all transit packets and detects whether they are associated with a binding in the binding cache. The pseudo-CN further strips the packets destined to the CN of mobility options and performs address replacements for outbound packets to the mobile node. (See Figs. 2 and 3 and column 5, lines 7-62, of Evans). As such, Applicant submits that Evans has nothing to do with moving flows between different end user nodes.

Applicant submits that Mikkonen et al. generally discusses a system that may include a mobile terminal, an access point, an access point controller and a mobile domain router. The mobile terminal may establish an initial radio flow by transmitting a default flow identifier in uplink packets via the access point to the access point controller. The access point controller may detect a need to allocate a radio flow label for the flow and the access point controller may verify the availability of radio resources for the flow. Upon successful verification, the access point controller may allocate a new flow label (FID). Flow labels may comprise source and destination addresses and port numbers and

may have 20 bytes. The FID may be provided to a mobile terminal, which may generate a shorter RFID. The access point may substitute the RFID with the FID to obtain normal source and destination addresses and port numbers. (See generally column 10, line 28, through column 12, line 37, of Mikkonen et al.). However, Applicant submits that Mikkonen et al. does not discuss moving flows between end-user terminals.

Independent claim 1, as amended herein, recites, in part, “informing a current address of a first node to at least one of a third node and a content source node”, “receiving at least one home address for said first node in response to the informing of the current address” and “initiating a multimedia session between said first node and said content source node, wherein said multimedia session comprises at least two flows associated with different home addresses, and wherein each of said at least two flows carries a separate media stream”. Independent claim 46, which has its own scope, recites similar features. Applicant respectfully submits that the cited art fails to teach or suggest these features.

Per the above, Applicant submits that Evans discusses a Mobile IP mechanism wherein a home address represents a permanent address for a **single** network node (mobile node). Applicant submits that Evans is directed to allowing movement of mobile nodes between different network access points (foreign agents). Applicant submits that Evans fails to teach or suggest that different media streams in the form of packet flows in a multimedia session may be addressed to **different** home addresses, as claimed. Applicant submits that applying such a procedure to Evans would result in sending media

stream flows to different nodes, despite the fact that such streams were intended for a single network node. Further, Applicant submits that Evans fails to teach or suggest that home address associations to care-of addresses can be used to control the movement of individual flows of a multimedia session to alternative nodes, either temporarily or permanently. As for Mikkonen et al., Applicant submits that the patent uses the term “flow” exclusively to refer to a packet bearer from a mobile terminal to an access point, and from there, to an access point controller. As such, Applicant submits that Mikkonen et al. fails to cure the above deficiencies of Evans.

Independent claim 1 also recites “detecting a need to move at least one flow among said at least two flows from said first node to a second node.” Independent claim 46, which has its own scope, recites similar features. The Office Action conceded on page 3 that Evans does not teach these features. Applicant submits that Mikkonen et al. does not cure these deficiencies of Evans.

In rejecting claim 1, the Office Action cited Figs. 1(a), 6 and 6, column 3, lines 5-45, and column 10, line 28, through column 11, line 64, of Mikkonen et al. However, Applicant submits that the cited sections of Mikkonen et al. fail to teach or suggest detecting a need to move at least one first flow from a first node to a second node, as claimed. Applicant submits that in Mikkonen et al., the radio flows are fixed during their lifetimes between a mobile terminal and an access point (base transceiver station), and as such, a radio flow is never moved between network nodes. It appears that, should a new radio flow be established to a new access point, the flow would be established from



scratch using the negotiation procedure illustrated in Fig. 6 of Mikkonen et al. Applicant submits that the mobile identification, radio flow label and long flow label would need to be brought to the attention of the new access point in order to establish a label mapping therein and that radio capacity availability would need to be checked prior to establishment of radio flows. As such, Applicant submits that a person of ordinary skill in the art would not be able to use the teachings of Mikkonen et al. to arrive at the above-recited features of claim 1.

Further, with respect to the above rejection under 35 U.S.C. § 103, the Office Action only appended citations to quotations of the claimed features without providing any reasoning. As such, the record lacks reasoning as to **why** these features were rejected. Because no reasoning was provided, the Office Action failed to make a *prima facie* case of obviousness, as is required by the United States Supreme Court and the MPEP.

MPEP § 2143 states that “[t]he key to supporting any rejection under 35 U.S.C. 103 is the **clear articulation** of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made **explicit**” (emphasis added). Because the rejection over Evans and Mikkonen et al. lacks a clear articulation of the reasons why the claimed features would allegedly have been obvious, the rejection cannot be supported per the requirements set forth by the United States Supreme Court. Applicant respectfully notes that at least because the Office Action failed to establish a *prima facie* case of

obviousness, any rejection in a subsequent Office Action providing adequate reasoning would be presented for the first time on the record and as such, a next Action **cannot** be made final. Thus, it is respectfully submitted that the rejection is improper and must be withdrawn.

With respect to the alleged motivation to combine the cited art, the Office Action stated on page 4 that a person of ordinary skill in the art would have been motivated to combine Evans and Mikkonen et al. “because it would have maximized utilization of the communication network; and improved efficient usage of the communication network and control over active data transmission flows.” However, no support is provided for these conclusory assertions. Applicant respectfully requests that the Examiner provide detailed support for this motivation, including art and citations to specific sections thereof.

Claims 56-59 have been cancelled without prejudice or disclaimer. Claims 2-21 and 47-55 depend from claims 1 or 46 and add further features thereto. Thus, the arguments above with respect to the independent claims also apply to the dependent claims.

Per the above, Evans and Mikkonen et al., both individually and in combination, fail to teach or suggest all of the features of the above-rejected claims and further, the Office Action is deficient at least because the rejection does not make a *prima facie* case of obviousness. Accordingly, it is respectfully submitted that the rejection is overcome and respectfully requested that the rejection be withdrawn.

**New Claims**

New claims 60-67 have been added. Apparatus claims 60-67, which have their own scope, recite similar features to method claims 1-4, 6, 7, 12 and 13, respectively. Thus, it is respectfully submitted that the new claims patentably distinguish over the cited art for at least the reasons presented above with respect to the independent claims.

**Conclusion**

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, the applicant's undersigned representative at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, the applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,



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Enclosure: Petition for Extension of Time